Supreme Court of the United States

October Term, 1927.

MILTON E. SPRINGER, DALMACIO COSTAS, and ANSELMO HILARIO, Petitioners, v. THE GOVERNMENT OF THE PHILIPPINE ISLANDS, Respondent.	No. 564.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR THE PETITIONERS.

Previous Opinion in the Present Case.

The opinions in the Supreme Court of the Philippine Islands appear at pages 69-202 of the Record.

Jurisdiction.

The judgment of the Supreme Court of the Philippine Islands to be reviewed was entered on the 11th day of April, 1927 (R., 212). Petition for writ of certiorari was filed, and the writ granted, pursuant to section 7 of the Act of February 13, 1925 (43 Stat. 936, 940).

Statement of the Case.

The judgment here under review was entered by the Supreme Court of the Philippine Islands in an original proceeding in *quo warranto* brought in the name of the Insular Government against the three petitioners, to oust them as directors of the National Coal Company of the Philippine Islands. The judgment overruled a demurrer that had been entered by the petitioners and finally ousted them from their positions as directors.

The National Coal Company is a corporation, organized and existing under and by virtue of Act No. 2705, as amended by Act No. 2822, of the Philippine Legislature, and, also, under and by virtue of the Corporation Law of the Philippine Islands.

Section 4 of Act No. 2705 provides:

> "The Governor General on behalf of the Government of the Philippine Islands shall subscribe for fifty-one per centum of said capital stock and the remainder shall be offered to the public * * *. The voting power of all such stock owned by the Government of the Philippine Islands shall be vested exclusively in a committee consisting of the Governor General, the President of the Senate, and the Speaker of the House of Representatives."

The last sentence in the quoted excerpt is the part of the act herein important. It appears in identical form in the amendatory act referred to above. It is contended by the respondent that this provision is in conflict with the Philippine Autonomy Act in that it constitutes, in the respects hereinafter more fully set forth, an invasion of the executive power of the Governor-General.

Act No. 2705 was passed by the Insular Legislature March 10, 1917. It was presented to, and signed by, the then Governor-General as prescribed by section 19 of the Philippine Autonomy Act. Section 19 of the Autonomy Act also re-

quires all laws enacted by the Philippine Legislature to be reported to Congress, which has reserved to itself the power, if it sees fit, to annul them. Act 2705 was so reported, but it has never been annulled by Congress. The foregoing facts are, also, true of Act No. 2822, which was passed by the Philippine Legislature March 5th, 1919.

The foregoing legislation was again brought specifically to the attention of Congress in the Wood-Forbes Report on Conditions in the Philippine Islands (at p. 42 thereof), in which the recommendation was made (p. 46) "that Congress declare null and void legislation which has been enacted diminishing, limiting or dividing the authority granted the Governor-General under Act No. 240 of the 64th Congress, known as the Jones Bill [that is, the Autonomy Act]." (Document No. 325, H. R., 67th Cong. 2d Sess.)

After the enactment and approval of Act No. 2705 in 1917, the National Coal Company was organized, and thereafter, until the inception of the present dispute in December, 1926, the Governor-General, the President of the Senate and the Speaker of the House of Representatives jointly voted the government stock in the Coal Company as Act 2705 provided. At that time, Congress having failed to annul the legislation as had been recommended, the then Governor-General, one of the authors of the recommendation, launched the present attack on the stock-voting provision of the statute. The occasion was a special meeting of the stockholders of the Coal Company, called for three o'clock on December 6, 1926, for the purpose of electing directors and of transacting such other business as might properly come before the meeting.

On November 29, 1926, the President of the Senate and the Speaker of the House of Representatives as members of the statutory committee had formally requested the Governor-General to call a meeting of the committee on or before December 6th, 1926, at 2:30 o'clock in the afternoon, for the purpose of determining how the Government's stock in the National Coal Company should be voted at the special meeting of stockholders, already mentioned as called for three

o'clock of that day. This formal request had been made as a result of the prior issuance on November 9, 1926, of Executive Order No. 37, wherein the Governor-General had announced his intention thenceforth to exercise alone the duties and powers by the statute confided to the committee.

In their request to the Governor-General, the President of the Senate and the Speaker of the House of Representatives, therefore, informed the Governor-General that, should he fail or refuse to call a meeting of the committee, they, as members thereof, would hold such a meeting at 2:30 o'clock in the afternoon of December 6, 1926, for the purpose mentioned in the said request.

The Governor-General failing to call the meeting, the President of the Senate and the Speaker of the House of Representatives met at the time and place specified in their request to the Governor-General, and held a meeting of the committee created by section 4 of Act No. 2705 as quoted above. The Governor-General was not present at this meeting. According to paragraph 12 of the complaint in the present action, his omission and refusal to participate therein, were for the reasons stated in Executive Order No. 37 already referred to.

At the meeting of the committee, it was unanimously resolved that the votes represented by the government-owned stock should be cast in favor of the following persons, as directors of the National Coal Company: Alberto Barretto, Frank B. Ingersoll, and the three petitioners, Milton E. Springer, Dalmacio Costas, and Anselmo Hilario.

Thereafter the special meeting of the stockholders of the National Coal Company was held at the time and place mentioned in the call. The Governor-General, through his proxy, the Hon. F. C. Fisher, attended the meeting and claimed sole representation of the stock held by the Government of the Philippine Islands. The President of the Senate and the Speaker of the House of Representatives also attended the meeting and immediately filed with the secretary of the company, a certified copy of the minutes of the meeting of the

statutory committee, already referred to, wherein it appeared that the committee had resolved that they, the President of the Senate and the Speaker of the House of Representatives should attend the stockholders' meeting for the purpose of representing the stock held by the Government of the Philippine Islands, and of voting that stock in accordance with the resolutions of the committee already referred to.

The Governor-General, through his proxy, thereupon objected to the claim of the President of the Senate and the Speaker of the House of Representatives to represent the government-owned stock and they, likewise, objected to his claim to represent it—all as appears at pages 6-8 of the minutes of this meeting as reproduced in Exhibit C of the record herein.

The chair recognized the President of the Senate and the Speaker of the House of Representatives, in their capacity as members of the committee and in accordance with the resolution approved by that committee, as the persons lawfully entitled to represent and vote all of the stock held by the Government of the Philippine Islands. To this ruling the Governor-General, through his proxy, protested.

Thereafter, at the election of the directors, the President of the Senate and the Speaker of the House of Representatives cast a ballot on behalf of the statutory committee in accordance with the resolutions of that committee, already referred to. The Governor-General, through his proxy, purporting to represent the government-owned stock, also cast a ballot for the election of the directors; but in accordance with the previous ruling of the chair, this ballot was disregarded and those persons voted for by the President of the Senate and the Speaker of the House of Representatives as representing the committee, including the three petitioners herein, were declared elected as directors of the company. As the proxy of the Governor-General, also, voted for two of the five persons voted for by the President of the Senate and the Speaker of the House of Representatives, the rights

of the three petitioners only, out of the five persons voted for by the President of the Senate and the Speaker of the House of Representatives, are now being contested by the respondent.

The present proceedings in *quo warranto* were shortly thereafter instituted in the name of the Government of the Philippine Islands with the object, as stated, of ousting the petitioners from their positions as directors of the Coal Company. The Supreme Court of the Philippine Islands (Chief Justice Avancena and Justices Villamor and Villa-Real dissenting) held that section 4 of Act No. 2705, as amended by Act No. 2822, was invalid insofar as it purported to vest in either the President of the Senate or the Speaker of the House of Representatives, as members of the committee therein provided for, any share in the voting power of the government-owned stock in the National Coal Company; but that insofar as it gave such power to the Governor-General it was valid and a sufficient warrant for his sole exercise of the power and that, even in the absence of statutory provision for his exercise of the stock-voting power, that power would be his by reason of its inherently executive character. The court, therefore, gave judgment ousting the three petitioners as directors of the National Coal Company.

The question herein presented for review is, then, whether that portion of the acts of the Philippine Legislature, already alluded to, is really invalid as in conflict with provisions of the Autonomy Act of 1916, commonly known as the Jones Law.

SUMMARY OF ARGUMENT.

The voting power of the government-owned stock of the National Coal Company is not an office and all respondents contentions as to an alleged invasion of the Governor-General's powers of appointing persons to public office is for that reason quite beside the question which the present case presents. The duty of voting government-owned stock involves no delegation to the members of the stock-voting committee of any sovereign, or governmental, power. It is, therefore, under the decisions of this court not a public office within the rules as to the executive power of appointment. But regardless of the character of the duties of the members of the committee no new offices were, under Act 2705, created since the members of the committee have no tenure of the voting power apart from their tenure of the offices of Governor-General, President of the Senate and Speaker of the House of Representatives—in other words Act 2705 merely increases the duties of the offices just named. Under the decisions of this court such an increase of the duties attaching to offices already in existence is no invasion of the executive power of appointing persons to public office. The only question which the case presents is whether the duties so attached to the legislative offices of President of the Senate and Speaker of the House of Representatives are so essentially executive in character as to be insusceptible of attachment to legislative offices.

The Philippine Legislature has all general legislative powers such as legislatures of states and territories ordinarily enjoy. This is clear both from the language of the Autonomy Act and from the debates in Congress at the time of this adoption.

It is not disputed that the objects for the attainment of which the Coal Company was created were within the power of the Philippine Legislature. The voting of the government-owned stock in the National Coal Company

is merely a part of the machinery for the management of that corporation and, under the Legislature's power to create corporations for the attainment of objects otherwise within its power and to provide for the organization of such corporations and for their management, the legislature may confer the voting power of the corporate stock as it sees fit. In the case of private corporations, adopted by a legislature as instrumentalities for the accomplishment of those objects otherwise within its powers, corporate control has ordinarily been vested in persons entirely outside the government concerned. The National Coal Company is a private corporation. The decisions of this court uniformly hold that government ownership of part, or even all, of the stock of such a corporation does not change its private character. Even in the case of public corporations there are many instances of the vesting of control in legislative and judicial officers. The principle of the tripartite division of governmental power has no application to provisions for the management of corporations either public or private.

Even if the corporate entity of the National Coal Company were disregarded and even if the power of voting the government stock were regarded as a duty of caring for government property, still the stock-voting power, as such a duty, could be confided to legislative officers; for the duty of caring for government property is exclusively legislative. This is a characteristic feature of the American theory of government. This power was unquestionably within the general grant of legislative power to the Philippine Legislature.

The law is settled that the officers of such a corporation as the National Coal Company are not officers of the Philippine Government and the fact that the voting power of the government-owned stock in the National Coal Company is to be exercised for the purpose, *inter alia*, of selecting such officers does not make that voting power a part of the Governor-General's asserted power of appointing persons to public office. The decisions of this court cited by the respondents as

supporting a contrary proposition are entirely irrelevant. A recent decision of this court is conclusive of the proposition asserted by petitioners.

The provisions of the statute under attack would, however, be unobjectionable even if the company's directors, officers and employees were considered to be public officers and even if the stock-voting power in the National Coal Company were also conceded to be a public office. Section 18 of the Philippine Autonomy Act disqualifies legislators from appointment only to certain classes of public offices and even as to those offices to which it applies the disqualification is not perpetual. Under the proper construction of that section, the President of the Senate and the Speaker of the House of Representatives, who acted on the committee that elected the petitioners, were qualified to discharge that function even if that function be deemed, as stated, a public office. The Governor-General of the Philippine Islands is not vested with general executive power. His power is supreme but not general. He has only those powers to him specifically given by the Autonomy Act. He has certain specified powers of appointing persons to public office but those powers would not extend to the appointment of the persons holding the voting power in the National Coal Company or to the appointment of its directors, officers and employees even if all these persons were conceded to be public officers. The Governor-General is charged with no duty of faithful execution of the law that touches the management of the National Coal Company and no inference of power based on such a responsibility can, therefore, be made.

The act of the Philippine Legislature here in question was reported to Congress at the time of its adoption and during the eleven years that have since elapsed Congress, though entitled to do so, if it sees fit, has taken no steps to annul that act although such annulment was the subject of specific recommendation to it. Under these circumstances the decisions of this court establish that Congressional approval is to be

inferred. Congressional approval would give to Act 2705 a status equivalent to that of an act of Congress and as such the act should not be disturbed even though the foregoing contentions of the petitioners be deemed unfounded.

THE ARGUMENT.

POINT I.

The voting power of the government-owned stock in the National Coal Company is not an office and all respondent's contentions as to an alleged invasion of the Governor-General's asserted general power of appointing persons to public office is, for that reason, quite beside the point.

The Philippine Supreme Court in its opinion in the present case held that the power and duty of voting the government-owned stock held in the National Coal Company constituted a public office and that in conferring a share in this voting power upon the President of the Senate and the Speaker of the House of Representatives, the Philippine Legislature had infringed upon the executive power of appointment to public office which, the court said, was under the Autonomy Act, conferred exclusively upon the Governor-General.

Mechem at page 1 of his work on Public Offices and Public Officers defines an office as follows:

> "A public office is the right, authority and duty, created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public. The individual so invested is a public officer."

And at page 5 of the same work it is further stated:

> "The most important characteristic which distinguishes an office from an employment or contract is that the creation and conferring of an office involves a delegation to the individual of some of the sovereign functions of government, to be exercised by him for the benefit of the public;—that some portion of the sovereignty of the country, either legislative, executive or judicial, attaches, for the time being, to be exercised for the public benefit. Unless the powers conferred are of this nature, the individual is not a public officer."

The criteria of public office summarized by Mechem are in accord with those to be gathered from the various decisions of this court.

Sheboygan County v. *Parker*, 3 Wallace 93, is a case in point. In that case the legislature of the state of Wisconsin had authorized the county of Sheboygan to subscribe to the capital stock of a certain projected railroad, and in the act so authorizing such subscription had appointed certain persons as a board of commissioners to make the subscription and to issue the bonds of the county covering the same. The state constitution provided that "all county officers shall be elected by the electors of the county." The contention was that the act of the legislature was in conflict with this constitutional provision insofar as it purported to appoint the persons named in the act as commissioners for the purposes thereof, since, it was contended, such commissioners were "officers" within the meaning of the constitutional provision just quoted. This court in the course of its decision said of the commissioners:

> "Such persons, in performance of their special duty, are in no proper sense, 'county officers.' They do not exercise any of the *political* functions of county officers, such as levying taxes, etc. They do not exercise 'continuously, and as a part of the regular and permanent administration of the government, any important public powers, trusts, or duties.' (*State* v. *Kennon*, 7 Ohio 562.)

> "An officer of the county is one by whom the county performs its usual *political* functions; *its functions of government.* Any other persons appointed by the legislature and the people of the county, would be as competent to execute the bonds of the corporation as the supervisors. They are the lawful agents of the people for this special purpose, and though nominated by the legislature, they cannot act without the assent of the citizens of the county, ascertained in the manner directed by law; and, having so acted, the county cannot now repudiate their acts." (Italics ours.)

It is apparent that in this decision this court was in accord with the view of Mechem that the most important characteristic of a public office is that it involves a delegation of some portion of the political, or sovereign, power.

The same view was expressed by the territorial court of Wisconsin before Wisconsin was admitted to statehood. In *United States* v. *Hatch,* 1 Pin. 182, it was held:

> "The organic law of the territory of Wisconsin (Act Cong. April 20, 1836), providing for the appointment of all civil officers by the executive, embraces only those officers in whom a portion of the sovereignty is vested, or to whom the enforcement of municipal regulations or the control of the general interests of society is confided, and does not include such officers as canal commissioners."

In *United States* v. *Hartwell,* 6 Wallace 385, this court at page 393, pointed out the other criteria noted by Mechem:

> "An office is a public station, or employment, conferred by the appointment of government. The term embraces the ideas of *tenure, duration, emolument, and duties.*
>
> "The employment of the defendant was in the public service of the United States. He was appointed pursuant to law, and his compensation was fixed by law. Vacating the office of his superior would not have effected the tenure of his place. *His duties were continuing and permanent,* not *occasional or temporary.* They

were to be such as his superior in office should prescribe" (Italics ours.)

These statements were afterwards approved in *United States* v. *Germaine*, 99 U. S. 508, 511, as well as in subsequent cases.

The same views obtain in the state courts. In *State* v. *Kennon*, 7 Ohio State, 546, 556, cited by this court in the *Sheboygan* case, *supra*, the ideas of duration, tenure, permanency and continuity are emphasized; in a New York case that is often quoted, *In the Matter of Oaths*, 20 Johnson, 492, 493, there is the same emphasis; and in *Opinion of the Judges*, 3 Greenl. 481, the Supreme Court of Maine said:

> "We apprehend that the term 'office' implies a delegation of a portion of the sovereign power to, and the possession of it by, the person filling the office; and the exercise of such power within legal limits constitutes the correct discharge of the duties of such office. The power thus delegated and possessed may be a portion belonging sometimes to one of the three great departments and sometimes to another; still it is a legal power which may be rightfully exercised, and in its effects it will bind the rights of others, and be subject to revision and correction only according to the standing laws of the state. An employment merely has none of these distinguishing features. A public agent acts only on behalf of his principal, the public, whose sanction is generally considered as necessary to give the acts performed the authority and power of a public act or law. And if the act be such as not to require such subsequent sanction, still it is only a species of service performed under the public authority and for the public good, but not in the exercise of any standing laws which are considered as rules of action and guardians of rights."

Other state cases in which similar views have been expressed are *Bunn* v. *People*, 45 Ill. 397; *Eliason* v. *Coleman*, 86 N. C. 235; *Commonwealth* v. *Swasey*, 133 Mass. 538; *Doyle* v. *Aldermen*, 89 N. C. 133; *Miller* v. *Supervisors*, 25 Cal. 98;

State v. *Kirk*, 44 Ind. 401; *Hill* v. *Boyland*, 40 Miss. 618; *Walker V. Cincinnati*, 21 Ohio St. 14; *People* v. *Nichols*, 52 N. Y. 478.

Since the question is as to the meaning of the terms, "office" and "officers," as used in the Philippine Autonomy Act, it seems not inappropriate to refer to an elaborate report of a Congressional committee to be found in House Reports of the Fifty-fifth Congress, Third Session, Vol. 2, H. R. No. 2205, in which, after examining the authorities discussed above as well as many others, the committee concluded:

> "In respect to visitors to the Military Academy, etc., the committee finds that those members of the House of Representatives appointed and designated as visitors to the Military Academy at West Point, to the Naval Academy at Annapolis, and the regents and directors and consulting trustees to the various public institutions in the District of Columbia and appointed by the Speaker of the House, are not, nor are any of them, officers under the United States within the meaning of the Constitution."

From the foregoing review of authorities, then, it is apparent that the most important characteristic of a public office is "that it involves a delegation of a portion of the sovereign functions of government to the person filling the office." Other criteria mentioned are "tenure, duration, emolument and duties." The duties must be "continuing and permanent, not occasional or temporary." In the light of these criteria it is obvious that the power of voting the government-owned stock in the National Coal Company is not an office within the settled judicial meaning of that term.

To the petitioners it seems that the matter is concluded by the leading case, *Bank of the United States* v. *Planters Bank of Georgia*, 9 Wheaton, 904, in which Chief Justice Marshall said:

"It is, we think, a sound principle, that when a government becomes a partner in any trading company, it divests itself, so far as concerns the transactions of that company, of its sovereign character, and takes that of a private citizen. Instead of communicating to the company its privileges and its prerogatives, it descends to a level with those with whom it associates itself, and takes the character which belongs to its associates, and to the business which is to be transacted. Thus, many states of this Union, who have an interest in banks, are not suable even in their own courts; yet they never exempt the corporation from being sued. The State of Georgia, by giving to the bank the capacity to sue and be sued, voluntarily strips itself of its sovereign character, so far as respects the transactions of the bank, and waives all the privileges of that character. As a member of a corporation, a government never exercises its sovereignty. It acts merely as a corporator, and exercises no other power in the management of the affairs of the corporation, than are expressly given by the incorporating act.

"The government of the Union held shares in the old Bank of the United States; but the privileges of the government were not imparted by that circumstance to the bank. The United States was not a party to suits brought by or against the bank in the sense of the constitution. So with respect to the present bank. Suits brought by or against it are not understood to be brought by or against the United States. *The government, by becoming a corporator, lays down its sovereignty, so far as respects the transactions of the corporation, and exercises no power or privilege which is not derived from the charter.*" (Italics ours.)

This case has been followed in *Bank of Kentucky* v. *Wister*, 3 Peters, 431; *Briscoe* v. *Bank of Kentucky*, 11 Peters 323; *Darrington* v. *Bank of Alabama*, 13 How. 12; *Curran* v. *State of Arkansas*, 15 How. 304; *Sloan Ship Yards Corporation* v. *U. S. Shipping Board Emergency Fleet Corporation*, 258 U. S. 549, and in other cases.

It should be noted that in the *Planter's Bank* case, Chief Justice Marshall says flatly that "the government by becom-

ing a corporator lays down its sovereignty, so far as respects the transactions of the corporation, and exercises no power or privilege which is not derived from the charter." This is obviously the fact. Every other stockholder has exactly the same sort of voting power as the government.

In its brief in opposition to the granting of the present writ of certiorari, the respondent cited, as determinative of the sovereign character of the power of voting government-owned stock in a private corporation, *Chesapeake & Delaware Canal Co.* v. *United States*, 250 U. S. 123. This case, however, rightly understood, is in no sense a qualification of the views of Chief Justice Marshall in the *Planter's Bank* case. In the *Chesapeake & Delaware* case, the United States, as a stockholder in the Canal Company, sued in 1911, to recover dividends that had been declared by that company in the years 1873, 1875 and 1876. By way of defense it was contended that the statute of limitations had run against the government since the government, it was contended, was in the position of an ordinary stockholder and could not claim governmental immunity from statutes of limitations and rules of laches. This court held that the defense was ill-conceived. In the course of the opinion it was said:

> "If the Government were asserting any rights with respect to the conduct of the corporation's affairs, its contracts or its torts, then its rights, duties and privileges would be no greater than those of any other stockholder. *Bank of the United States* v. *Planters' Bank*, 9 Wheat. 904, 907. But here the Government is pursuing a right to recover, which is not affected by its relation to the corporation as a stockholder. The declaration of the dividends which is admitted, gave it the status of a creditor of the company, and, thereafter, the right to recover was unaffected by any stockholder relation. To this must be added that the statutes and rules of limitation relate to the remedy to enforce the right, and not to the corporate relation from which the right springs, and that, since these dividends constituted 'public money' applicable to public purposes only, the

Government in collecting them was acting in its governmental capacity as much as if it were collecting taxes, such as those with which, no doubt, the stock which produced the dividends was purchased. The Circuit Court of Appeals answered this contention in a manner not to be improved upon, saying (223 Fed. Rep. 926, 928):

"'We may perhaps add a few words to say that the fallacy of the company's argument seems to lurk in the assumption that in this action the government is asserting a right in its character as a stockholder. Undoubtedly the right came into being because the government owns the stock but in no other respect has the suit anything to do with such ownership. The government is not suing as a stockholder; it is suing as a creditor, and in this character alone is it now to be considered.'"

The decision plainly proceeds on the well-settled rule that the declaration of corporate dividends creates a debt; that a debt is a debt from whatsoever source arising; and that the rules usual to debt situations therefore are applicable. It was distinctly recognized that the case is different where the government is "asserting any rights with respect to the conduct of the corporation's affairs"—such, for example, as the voting power of the corporate stock. That power is one common to all stockholders and is theirs only in that capacity. It is a right in its nature private and not sovereign.

Under the decisions of this court, such as the *Sheboygan* case, *supra*, the nature of the power here in question is obviously conclusive of the question whether it is a public office within the rules as to the executive power of appointment; but even if the power in question were sovereign in character, consideration of the other criteria mentioned in the cases would lead to the same conclusion. Thus, if duration and tenure are considered, it is clear that those sharing in the power of voting the government-owned stock have no tenure of the power apart from their tenure of the offices of Governor-General, President of the Senate, and Speaker of

the House of Representatives, or—what is the same thing—that the alleged office has no duration apart from the offices just named. Considering this fact, it is clear that the statute could not be regarded as creating a public office, even if a sovereign power were concerned. The power and duty of voting the government stock would not be a separate office but a mere additional duty attached to the offices already in existence.

In *Shoemaker* v. *United States*, 147 U. S. 282, this court held that statutes assigning to existing offices additional duties could in no sense be regarded as creating new offices and involving a Congressional invasion of the executive power of appointment of persons to public office. The court said at page 300:

> "There are several features that are pointed to as invalidating the act. The first is found in the provision appointing two members of the park commission, and the argument is, that while Congress may create an office, it cannot appoint the officer; that the officer can only be appointed by the President with the approval of the Senate, and that the act itself defines these park commissioners to be public officers, because it prescribes that three of them are to be civilians, to be nominated by the President and confirmed by the Senate. This, it is said, is equivalent to a declaration by Congress that the three so sent to the Senate are 'officers,' because the Constitution provides only for the nomination of 'officers' to be sent to the Senate for confirmation; and that it hence follows that the other two are likewise 'officers,' whose appointment should have been made by the President and confirmed by the Senate. As, however, the two persons whose eligibility is questioned were at the time of the passage of the act and of their action under it officers of the United States who had been theretofore appointed by the President and confirmed by the Senate, we do not think that, because additional duties, germane to the offices already held by them, were devolved upon them by the act, it was necessary that they should be again appointed by the President and confirmed by the Senate. It cannot be doubted,

> and it has frequently been the case, that Congress may increase the power and duties of an existing office without thereby rendering it necessary that the incumbent should be again nominated and appointed."

In the court below the respondent put great emphasis on the parenthetical phrase in the above excerpt—"germane to the offices already held by them." The phrase was given no emphasis in the opinion. Neither was it explained. It is submitted that it obviously can mean no more than that, in additions to official duty such as the court was there considering, Congress must observe the constitutional principle of tripartite division of governmental power. The respondent, for the purpose of its case, would like to spell out from this phrase some further limitation on the power of the legislature in grouping duties into public offices; but very little reflection is needed to show that in this regard the legislative power is plenary, with the single limitation above noted. That limitation, furthermore, goes only to the constitutionality of the grouping; it does not alter the fact that in such a case there is a mere addition to the duties of an office already existing and not the creation of a new office and an appointment thereto.

It must be apparent that such is the nature of the statute herein in question and that no new office was created. If no new office was created, there obviously could be no invasion of any power of appointment to public office supposed to be lodged elsewhere than in the Legislature by the Autonomy Act. The law on this point is well settled by the *Shoemaker* case. Any contention to the contrary is simply frivolous. The only question the case presents is whether the stock-voting power in the National Coal Company is a governmental power executive in character and so, insusceptible of being made an incident of offices in the legislative branch of the Insular Government.

POINT II.

The Philippine Legislature has all general legislative powers such as are exercised by states and territories.

Section 8 of the Philippine Autonomy Act provides:

> "General legislative power, except as otherwise herein provided, is hereby granted to the Philippine legislature, authorized by this act."

The phrase "general legislative power" was inserted in this section on motion of Congressman Towner, formerly Chairman of the Committee on Insular Affairs of the House of Representatives (Cong. Rec., vol. 51, pt. 16, p. 16233). In explaining his motion, Mr. Towner remarked:

> "The language which I am asking to have introduced as a substitute is that which is usually given and approved in the formation of constitutions for States and Territories, when they desire to confer legislative power. In other words, it is now well established under American law what general legislative power is, *and this legislature ought to have all general legislative power as is exercised by States and by Territories.*" (*Ibid.*) (Italics ours.)

In supporting the motion of Mr. Towner, Congressman Mann, the Republican floor leader in the House of Representatives, said:

> "Mr. Chairman, I am in favor of the amendment offered by the gentleman from Iowa. * * * *I am in favor giving the Philippine Legislature broader power than we would give to a territory of the United States.* What are we doing today? On one side we are trying to ascertain whether the Philippine people are competent for independence. Never in this world can you ascertain that by treating them like children. The only way that can be ascertained is to put responsibility upon them and see

whether they measure up to the responsibility. Now, as far as I am concerned, while I am not in favor of giving the Philippine Islands independence, separating them from the United States, *I am in favor of giving them control over their local affairs—exclusive control.* Of course we could change that law at any time. I am not in favor of letting the Philippine Government enter into foreign relations. I think the United States should stand for them in directing their foreign affairs, but I believe *they ought to have the right to govern themselves locally,* and you can not give them that right by putting a lot of restrictions in and saying they are not competent to do this, we are afraid they will do wrong about that, we will not trust them about some other things. We have got to trust them sooner or later. We have got to turn them loose as an independent people or else we have got to make them friends of ours if they remain under the jurisdiction of the Government of the United States, and the only way you can do so is to treat them like men. (Applause) We do not own all the wisdom of the world ourselves. We sometimes doubt about our own capacity for self-government. I do not know whether they will have self-government without trials and tribulations, though I do not assume that they will. We do not. We constantly have trouble amongst ourselves in the best and most enlightened parts of the United States. *Let the Philippine Government take their chance and see whether they can protect themselves in their own government,* and when that is determined it will be time enough for us to determine, first whether they want to be separated from the United States, which I do not think they will then want, and, second whether if they want it the United States feels at liberty to let them go." (Cong. Rec., vol. 51, pt. 16, p. 16234.) (Italics ours.)

In the course of his remarks, Mr. Mann was interrupted by Congressman Helm as follows:

"Mr. Helm: If I understand the gentleman correctly, he wants to give them *the fullest measure of power in the matter of legislation?*"

"Mr. Mann: I do."

(*Ibid.*) (Italics ours.)

Congressman Miller, speaking also in favor of Mr. Towner's motion, said:

> "Now, Mr. Chairman, the language of the paragraph as it now stands, to my mind is clearly improper. Just for a moment see what it does. All legislative powers are granted that heretofore have been granted, to what? To the Philippine Legislature—that is, the assembly—and to the Philippine Commission, and are hereby granted to the Philippine Government. That is, this paragraph grants to the legislature of the islands which are now creating only such power as heretofore has been granted to the assembly and to the commission, and that are also herein conferred upon the legislature, which is a complete restriction. As the gentleman from Illinois (Mr. Mann) has here clearly and emphatically stated, if we are to give these people anything like an opportunity to demonstrate their capacity for government, *we certainly must give them free rein, as far as possible, in matters of legislation.*
>
> "Now, if we turn over the page, we find this language in section 12:
>
> > 'That all local legislative powers in the Philippines, except as herein otherwise provided, shall be vested in a legislature.'
>
> "There is very clearly a conflict between the two. The last does not go even as far as the first. It say 'all local legislative.' I say now, Mr. Chairman, when that paragraph is reached I propose to strike out the word 'local'. *I think the Philippine Legislature should not be tied to Congress constantly by an apron string. I think the people of the islands should have an opportunity to legislate.* Let them draw upon their experience, their knowledge of the affairs of their own people, and act accordingly. *We should let them have free and full opportunity to do so.* But we have not done so in this paragraph. We have hedged them in, we have curbed them in, we have restricted their legislative activity to within very narrow limits." (Cong. Rec., vol. 51, pt. 16, p. 16234.) (Italics ours.)

Congressman Towner's motion was approved. (Cong. Rec., vol. 51, pt. 16, p. 16235.)

We have quoted at length from the record of the Congressional debate on the Jones bill, in order to show beyond cavil the intention and purpose of Congress to grant to the Filipino people, through their legislature, "control over their local affairs—exclusive control", "the right to govern themselves locally", "the fullest measure of power in legislation", "free rein, as far as possible, in matters of legislation".

Upon the proposition of giving to the Filipino people "the broadest liberty of action in all their local affairs" and of granting to the Philippine Legislature "all of the legitimate power of local self-government and self-taxation," there was complete agreement. Republicans and Democrats were of the same opinion. This was again manifest from the general remarks made on the bill as a whole.

Congressman Mann said:

> "If we deal with the Filipino people rightly, they will want to stay here. I have heard debate here about whether the Filipinos are capable of self-government. I assume, for the purpose of argument at least that they are capable of self-government. *I am in favor of giving to the Filipino people the broadest liberty of self-government*, retaining them under the American flag. (Applause on the Republican side.) The objection I have to the pending bill, in part, is that it has too many restrictions in it. If others do not offer amendments to remove these restrictions, I expect to offer a number of amendments to remove the restrictions upon the Philippine Legislature; and for this reason: *If we keep them, we ought to give them the widest liberty of action in all their local affairs.*" (Cong. Rec., vol. 51, pt. 16, p. 16025.) (Italics ours.)

Congressman Jones, the author of the measure, said:

> "This bill does not express in its terms all that he may have desired and hoped for, but I am in a position to say that he accepts it as *a definite and decided advance in the direction of a more autonomous government* and of proximate and definite independence.

"It give to his people a legislature of their own choosing in both of its branches; it removes the odious restriction upon the right of suffrage, which denies to the Filipino who can read and write a foreign language all participation in the civil affairs of his country; *it enables the Filipinos to make their own laws and to raise and to expend the public revenues,* and it provides for the early and thorough Filipinization of the civil service." (Cong. Rec., vol. 51, pt. 16, p. 16080). (Italics ours.)

Congressman Towner said:

"Gentlemen differ with regard to the matter; each has his individual opinion. But there is this common ground upon which we can stand. *We all agree that we should give them the largest measure of self-government of which they are capable now and at all times.* A larger measure of self-government should be given to them now by this bill than they possessed under the old law." (Cong. Rec., vol. 51, pt. 16, p. 16134.) (Italics ours.)

And, finally, Senator Hitchcock, as Chairman of the Senate Committee on Insular Possessions and Territories, said:

"The restrictions upon the legislative powers of the Philippine Legislature in the past have been considerable, because of the fact that the president has the power to appoint the upper house. But under this legislation, upon which the Senate and the House have now practically reached an agreement, both houses will be composed of Filipinos elected by the people. They have power to pass all laws with relation to taxation; they have power to pass all laws with relation to appropriations; they have power to pass all laws concerning the right of property with a few exceptions, which are ingrafted in the bill, just as Congress and our State legislatures are restrained by certain constitutional limitations.

"But while this act is virtually a constitution for the Philippine Islands and places a legitimate limit upon the power of the legislature, *it leaves to the Philippine Legislature virtually the power of local government.* It gives to the Philippine Senate the power to confirm appointments made by the Governor-General. It gives to

> the Philippine Legislature the power to say how high taxes shall be. It gives to the Philippine Legislature the power to say for what appropriations shall be. It gives to the Philippine Legislature the control over the municipalities of the Islands, the cities and the towns. It gives to the Philippine Legislature, with the approval of the President, the disposition of the public domain. *It gives to the Philippine Legislature, in short, all of the legitimate power of local self-government and self-taxation*, and it is in my opinion a measure wisely planned and carefully planned to increase beyond the point that has heretofore existed these powers of local self-government." (Cong. Rec., vol. 53, pt. 13, p. 12593.) (Italics ours.)

It seems plain that by section 8 of the Autonomy Act, the Philippine Legislature received all powers classified as legislative under the American theory of government unless such powers are elsewhere in that act expressly excepted or expressly given to another branch of the Insular Government. This fact should be remembered in considering the act here in question.

POINT III.

The voting of the government-owned stock in the National Coal Company is merely a part of the machinery for the management of that corporation and, under the Legislature's power to create corporations for the attainment of objects within its powers and to provide for the organization of such corporations and for their management, the Legislature may confer the voting power of the corporate stock as it sees fit.

Act No. 2705, as amended by Act No. 2822, it should be borne in mind, is the charter of the National Coal Company. It was enacted by the Philippine Legislature in the exercise

of its acknowledged authority to create corporations and to provide for their organization and management. Power to prescribe the method of voting the stock in a corporation is an incident of the power to provide for the organization and management of such corporations.

Congress has often created corporations to act for it in the attainment of those objects that are within its powers and has often given over the voting power in such corporations to persons other than executive officers of the Government, or—what is the same thing where the corporations have been without capital stock—it has given over the management of the corporations to such persons. Examples of the latter sort are the Smithsonian Institution and the National Home for Disabled Soldiers.

In incorporating the Smithsonian Institution, Congress provided:

> "The business of the institution shall be conducted at the city of Washington, by a Board of Regents, named the Regents of the Smithsonian Institution, to be composed of the Vice President, the Chief Justice of the United States, and three members of the Senate and three members of the House of Representatives; together with six other persons, other than members of Congress, two of whom shall be resident in the city of Washington; and the other four shall be inhabitants of some State, but no two of them of the same State" (28 Stat. 41).

The selection of the regents was provided for as follows:

> "The Board of Regents shall be appointed as follows: The Members of the Senate by the President thereof; the Members of the House by the Speaker thereof; and the six other persons by joint resolution of the Senate and House of Representatives. The Members of the House so appointed shall serve for the term of two years; and on every alternate fourth Wednesday of December a like number shall be appointed in the same manner, to serve until the fourth Wednesday in December, in the second year succeeding their appointment.

> The Senators so appointed shall serve during the term for which they shall hold, without reelection, their office as Senators. Vacancies, occasioned by death, resignation, or otherwise, shall be filled as vacancies in committees are filled. The regular term of service for the other six members shall be six years; and new elections thereof shall be made by joint resolutions of Congress. Vacancies occasioned by death, resignation, or otherwise may be filled in like manner by joint resolutions of Congress" (9 Stat. 102, 103).

The National Home for Disabled Volunteer Soldiers was incorporated very shortly after the close of the Civil War. The President, the Secretary of War, the Chief Justice, and such persons as may be associated with them, were constituted a corporation to have perpetual succession and all corporate powers and responsibilities. The main establishment of the Home was located at Dayton, Ohio, and branches have since been established at Togus, Maine; Milwaukee, Wisconsin; Hampton, Virginia; Marion, Indiana; Leavenworth, Kansas; Santa Monica, California, and Danville, Illinois (14 Stat. 10).

These institutions are entities entirely apart from the executive departments of the Government of the United States. They manage large properties derived from the Government and employed by them for the attainment of objects within the powers enjoyed by Congress. While the respondent may be right that Congress has but infrequently resorted to this type of extra-governmental entity for the attainment of the objects within its powers that it has power to do so, when it sees fit, is beyond all doubt. *McCulloch* v. *Maryland*, 4 Wheat. 316.

A more frequently used extra-governmental means for the attainment of Congressional objectives has been the privately owned stock company, such, for example, as those concerned in *California* v. *Pacific Railroad Company*, 127 U. S. 1, and *Luxton* v. *North River Bridge Company*, 153 U. S. 525. It is needless to multiply examples of such corporations, for the

power of Congress to employ them in the attainment of its ends is well settled. As stated by this Court in the *Pacific Railroad* case, *supra*, at page 39:

> "It cannot at the present day be doubted that Congress, under the power to regulate commerce among the several States, as well as to provide for postal accommodations and military exigencies, had authority to pass these laws. The power to construct, or to authorize individuals or corporations to construct, national highways and bridges from State to State, is essential to the complete control and regulation of interstate commerce."

and in the *Luxton* case, it was stated at page 529:

> "Congress, therefore, may create corporations as appropriate means of executing the powers of government, as, for instance, a bank for the purpose of carrying on the fiscal operations of the United States, or a railroad corporation for the purpose of promoting commerce among the States. *McCulloch* v. *Maryland*, 4 Wheat. 316, 411, 422; *Osborn* v. *Bank of United States*, 9 Wheat. 738, 861, 873; *Pacific Railroad Removal Cases*, 115 U. S. 1, 18; *California* v. *Pacific Railroad*, 127 U. S. 1, 39. Congress has likewise the power, exercised early in this century by successive acts in the case of the Cumberland or National Road from the Potomac across the Alleghenies to the Ohio, to authorize the construction of a public highway connecting several States. * * *
>
> "* * * it may, at its discretion, use its sovereign powers, directly or through a corporation created for that object, to construct bridges for the accommodation of interstate commerce by land, as it undoubtedly may to improve the navigation of rivers for the convenience of interstate commerce by water."

Plainly corporations such as those involved in the two foregoing cases exercise the functions that some executive departments would exercise if Congress chose to "use its sovereign powers directly." Yet despite this fact and despite the fact that such corporations are instruments through which Congress exercises portions of its sovereign power, it

has nevertheless been usual to confide to the private stockowners in such corporations the power of control through the stock-voting power.

It will probably be suggested that the voting power in such cases "belongs" to the private stockholders as owners; but voteless corporate stock is to-day too common for voting power to be regarded as a necessary incident of stock ownership. Doubtless the capital contribution of stockholders in such corporations as those involved in the foregoing cases is what moves Congress in such cases to confer the voting power upon such contributors; but that is merely to say that this circumstance is the reason for Congress' act, not that it is the ground of its power. It lies within that power to confer the voting power of the corporate stock as Congress shall think fit.

The close resemblance between the Bridge Company in the *Luxton* case, the Railroad Company in the *Pacific Railroad* case and the National Coal Company in the present case must be apparent. All three are stock corporations; all three are instruments of the respective legislatures for the accelerating of the economic development of the territories over which they enjoy jurisdiction—in the *Luxton* case, through the construction of an interstate bridge; in the *Pacific Railroad* case, through the construction of a transcontinental railway; and in the present case, through the development of the coal deposits of the Philippine Islands.

If the stock-voting control of such instruments for the attainment of legislative objects can, without inroad on the executive power, be confided to utter strangers to the government, it is hard to see how the confiding of that power to legislative officers can constitute such an inroad.

The answer of the respondent, of course, is that the government ownership of the Coal Company stock makes the difference that leads to the result that it desires.

But government ownership, this court has repeatedly held, is insufficient to blur the corporate lines that separate

such corporations as that herein concerned from the government that has created them.

Bank of the United States v. *Planters Bank of Georgia*, 9 Wheat. 904;
Bank of Kentucky v. *Wister*, 3 Peters, 431;
Briscoe v. *Bank of Kentucky*, 11 Peters, 324;
Darrington v. *Bank of Alabama*, 13 How. 12;
Curran v. *Arkansas*, 15 How. 304;
Sloan Shipyards Corporation v. *United States Shipping Board Emergency Fleet Corporation*, 258 U. S. 549;
United States v. *Strang*, 254 U. S. 491;
Skinner & Eddy Corporation v. *McCarl*, 275 U. S. 1.

The officers of such a corporation are *its* officers, not those of the Government. *United States* v. *Strang, supra.* Its liability to suit is its own. *Sloan Shipyards Corporation* v. *United States Shipping Board Emergency Fleet Corporation, supra.* And the auditing of its accounts and the control of its financial transactions are duties of its own corporate officers with which public officers have not, *ex officio*, anything to do. *Skinner & Eddy Corporation* v. *McCarl, supra.*

It is recognized, that where a legislative object requires for its attainment the engaging in activities essentially commercial in nature, the employment therein of the usual commercial methods free from governmental "red tape" and formality, is a distinct advantage. *Skinner & Eddy Corporation* v. *McCarl, supra,* pages 7 and 8. In such cases the legislature's privilege of choosing as its instrumentality either the usual machinery of the executive departments or a separate extra-governmental entity is firmly established. *Luxton* v. *North River Bridge Company* and other cases cited *supra.*

Where the extra-governmental entity is chosen, the cases indicate that insofar as the management of its corporate affairs is concerned, the corporation so created is in the fullest degree a separate entity. The only blurring of the corporate

lines has been in the extension of governmental privileges and protection to such corporations.

Russell Motor Car Company v. *United States*, 261 U. S. 514;
United States v. *Walter*, 263 U. S. 15;
Clallam County v. *United States*, 263 U. S. 341;
United States Grain Corporation v. *Phillips*, 261 U. S. 106, 111;
United States Emergency Fleet Corporation v. *Western Union Telegraph Company*, No. 113 October Term, 1927.

In a word, such corporations are treated as in all respects facilitating, and in none embarrassing, the attainment of the objective aimed at in their creation. To restrict the legislature in its power of determining the mode of management of such corporations would be to limit the flexibility and adaptability of the instrument for no discernible reason. The principle of tripartite division of governmental power has yet to be applied to the management of the corporations adopted as a means of exercising legislative power. Safeguards against the oppression of the individual have here no place. The stock-voting power in the National Coal Company plainly is but a detail in the mode of management by law provided for that corporation. As such, it is submitted, its addition to the duties of legislative officers in no way infringes the tripartite division of governmental power.

POINT IV.

Conceding *arguendo* that the corporate entity of the National Coal Company may be disregarded and that the power of voting the government-owned stock may be regarded as a duty of caring for government property, that voting power, as such a duty, is nevertheless properly confided to legislative officers.

On the theory that the duty of voting the government-owned stock was a duty of caring for a government property interest, the Philippine Supreme Court held that the duty of voting the stock was one executive in character. It said (R., p. 104):

> "Just as surely as the duty of caring for Government property is neither judicial nor legislative in character is it as surely executive."

The court's assertion obviously involves a disregard of the Coal Company as a separate entity. The government property is the stock itself and not the property in the management of which the stock is voted. That a stockholder has no property interest in the property of the corporation whose stock he holds is elementary law and the long line of cases already cited establish beyond all question that as respects the corporate affairs of a government-owned corporation, the government is only a stockholder. Conceding, however, that the Coal Company as a separate entity may be disregarded and that caring for its property may be deemed a caring for government property, the result for which respondent argues still would not follow; for the duty of caring for government property is not one executive in character.

Whatever plausibility the court's statement to the contrary may seem to have resides in the vagueness of the phrase "the duty of caring for government property." The instances that

the phrase brings to mind are the Treasury Department "caring" for the public funds, the Department of the Interior "caring" for the public lands, the War Department "caring" for the arsenals and supplies of war, and so on. But the "care" that these departments bestow is solely in "execution" of the directions given by Congress. The power to give such directions for the care of public property and to authorize specific dispositions and uses of such property is, by section 3 of Article IV of the Constitution, confided expressly and exclusively to Congress:

> "The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; * * *"

It is well settled that neither the President nor the heads of any of the executive departments have any powers in respect to the use or disposal of public property apart from those given them by Congress.

Pan-American Petroleum Co. v. *United States*, 273 U. S. 456;
Mammoth Oil Co. v. *United States*, 274 U. S. 13;
United States v. *Hare* (C. C. A. 1867), Fed. Cas. No. 15303;
Knote v. *United States*, 10 Ct. Cl. 397;
Flores v. *United States*, 18 Ct. Cl. 352;
Lear v. *United States*, 30 Fed. 65;
United States v. *Nichol*, Fed Cas. No. 15879.

The authority of Congress may be given either generally in reference to a class of properties or specifically in reference to a particular property and Congress can withdraw a pending contest over the right of entry of public lands from the jurisdiction of the land department and itself determine the rights of the parties involved.

Emblen v. *Lincoln Land Co.*, 102 Fed. 559, aff'd 184 U. S. 660.

The powers of Congress in the care of government property are plenary. In that behalf the executive departments are no more than the agents or instrumentalities of Congress. It is plain that the duty of caring for government property, far from being "surely executive" is, in fact, legislative in character. The executive departments ordinarily perform the detail of such care; but to Congress belongs the power of direction and such direction may be as specific as Congress sees fit to make it.

While the constitutional provision just quoted and discussed is not of course directly applicable to the Philippine Legislature, it and the decisions under it are important as showing the scope of legislative power in respect of the care, management, use and disposal of government property under the American theory of government.

It will be recalled that by section 8 of the Autonomy Act it is provided that

> "General legislative power except as otherwise provided in this chapter, is granted to the Philippine Legislature."

There is nothing in the provisions of the chapter, relating either to the powers of the executive or to anything else, which indicates that the usual legislative powers in reference to the care of public property were excepted from the grant to the Philippine Legislature. Quite the contrary. The very next section of the Autonomy Act provides:

> "Section 9. That all the property and rights which may have been acquired in the Philippine Islands by the United States under the treaty of peace with Spain, signed December tenth, eighteen hundred and ninety-eight, except such land or other property as has been or shall be designated by the President of the United States for military and other reservations of the Government of the United States, and all land which may have been subsequently acquired by the Government of the Philippine Islands by purchase under the provisions of sections sixty-three and sixty-four of the Act of Congress

> approved July first, nineteen hundred and two, except such as may have heretofore been sold and disposed of in accordance with the provisions of said Act of Congress, are hereby placed under the control of the government of said islands to be administered and disposed of for the benefit of the inhabitants thereof, *and the Philippine Legislature shall have power to legislate with respect to all such matters as it may deem advisable;* * * *" (Italics ours.)

The provision of section 19 in reference to the operation of the veto power of the Governor-General in the case of appropriation bills, as well as the provision covering failures to make routine appropriations, indicates that the general power of appropriating government property to particular uses is the Legislature's. Reading these provisions with the grant of general legislative power in section 8 and bearing in mind the scope of legislative power in this regard under the American theory of government, there can be no doubt, in the light of the debates in Congress at the time of the passage of the Autonomy Act, that the Philippine Legislature in respect of the care of public property has the same power as the Congress of the United States itself enjoys.

In the court below the respondent cited *Jorer* v. *Insular Government*, 221 U. S. 623, as establishing that the care of government is an executive function. In that case this court held that, in the absence of contrary legislation, the Governor-General of the Philippine Islands, as the successor of the old Spanish provincial governors, had power to alienate tide lands of the public domain. But that decision antedated the Autonomy Act by five years. Plainly in the light of section 9 of that act (replacing sec. 12 of the Act of July 1, 1902, 32 Stat. 691, 695, printed in the appendix to this brief), the *Jorer* case is no longer law.

Whether—when the implications of the Coal Company's separate existence are disregarded—the voting of the government-owned stock in the National Coal Company is

within the legislative power of caring for government property obviously depends on the functional nature of a stockholder's voting power. That voting power may be exercised to make rules and regulations—that is, by-laws; to determine the broad lines of policies to be pursued by the corporation, in the main, through the selection and removal of directors; and to authorize such radical steps as the disposal of the corporate assets, the dissolution of the corporation and the like. The similarity between these functions and those exercised by Congress in directing the care of government property is obvious.

Corporations such as the Coal Company are mere instruments for the accomplishment of legislative objectives. It would be something of an anomaly if the adoption of the corporate instrument had the effect of transferring to the executive the directive control which the legislature itself enjoys when it chooses to act through the machinery of the executive departments.

It is therefore submitted that the confiding to legislative officers of the power of voting government-owned stock in such a corporation as the National Coal Company is not only permissible but absolutely necessary to preserve that degree of legislative control over government property which the American theory of government plainly contemplates.

POINT V.

The law is settled that the officers of the National Coal Company are not officers of the Philippine Government and the fact that the voting power of the government-owned stock in the National Coal Company is to be exercised for the purpose, *inter alia*, of selecting such officers does not make that voting power a part of the Governor-General's asserted power of appointing persons to public office.

In the court below and in this court in opposition to *certiorari*, the respondent argued that since practically all of the capital stock of the Coal Company is owned by the Philippine Government and since the voting power of that stock carries the power to elect all of the directors of the Coal Company and through the directors to control the appointment of all of the officers and employees of the Company, that voting power in effect amounts to a power of appointing persons to public office.

This contention obviously rests on the view that the directors, officers and employees of the Coal Company are public officers. The reason given for this somewhat novel point of view is that the Coal Company is a public agency—"a convenient means through which the Philippine Government may discharge a portion of its public duties" (respondent's brief on petition, p. 26). *McCulloch* v. *Maryland*, 4 Wheat. 316, 408-424, and *Dartmouth College* v. *Woodward*, 4 Wheat. 518, 638-639, were cited; but nothing more.

The difficulty with the first citation is that "governmental agency" within the meaning of that decision connotes neither government ownership nor even incorporation by the government concerned. *California* v. *Central Pacific R. R. Co.*, 127 U. S. 1, and many other cases. Yet it is not believed that even the respondent would contend that in the absence

of these elements a corporation's officers could be deemed the officers of the government on whose behalf it might be acting.

As for the passage cited from the *Dartmouth College* case, it deals only with a government's power of amending the charters of its public corporations. In view of the possibility of 49% private ownership of the Coal Company and the actual fact of *some* private ownership thereof, it seems impossible to classify it as a public corporation within the *Dartmouth College* decision; and even if the Coal Company were a municipal corporation—the example *par excellence* of the public corporation—it would be a novel contention indeed that its officers were the officers of the government that created it. Governmental agency for a governmental object is not enough to erase the lines incorporation has drawn. As Chief Justice Marshall said in the *Dartmouth* case (p. 638):

> "The objects for which a corporation is created are universally such as the government wishes to promote."

Apparently, too, the respondent must have overlooked a very recent decision of this court dealing with an American analogue of the Philippine corporation herein involved—*i. e.*, *United States* v. *Strang*, 254 U. S. 489. That case came up on demurrer to an indictment which charged the defendant therein with having unlawfully acted as agent of the United States in transacting business for a partnership of which he was at the time a member, in that, while employed by the Emergency Fleet Corporation as inspector, he had signed and executed certain orders to the partnership for repairing and altering a Fleet Corporation vessel. Speaking through Mr. Justice McReynolds, this court said at page 493:

> "The demurrer was properly sustained. * * *
> "The corporation was controlled and managed by its own officers and appointed its own servants and agents who became directly responsible to it. Notwithstanding

all its stock was owned by the United States it must be regarded as a separate entity. Its inspectors were not appointed by the President, nor by any officer designated by Congress; they were subject to removal by the Corporation only and could contract only for it. In such circumstances we think they were not agents of the United States within the true intendment of §41.

"Generally agents of a corporation are not agents of the stockholders and cannot contract for the latter. Apparently this was one reason why Congress authorized organization of the Fleet Corporation. *Bank of the United States* v. *Planters' Bank of Georgia*, 9 Wheat. 904, 907, 908; *Bank of Kentucky* v. *Wister*, 2 Pet. 318; *Briscoe* v. *Bank of Kentucky*, 11 Pet. 257; *Salas* v. *United States*, 234 Fed. Rep. 842."

It will probably be suggested that the refusal under the circumstances of the *Strang* case to disregard the entity of the Fleet Corporation is not a reason for a similar refusal here; but the statute in the *Strang* case was obviously specifically relevant to the prevention of fraud in the transacting of government business. The tripartite division of governmental power, on the other hand, is aimed chiefly at the prevention of oppression and injustice to the individual. If the *Strang* case called for no disregard of corporate entities, it would seem that the present is an *a fortiori* case.

POINT VI.

Conceding, for the sake of argument only, that voting the government-owned stock in the National Coal Company is a public office and conceding that that company's directors, officers and employees are public officers, still the provisions of the statute that are under attack are unobjectionable.

While the petitioners confidently believe that all those contentions of respondent are irrelevant that are based on the assumption that this case presents any question in reference to the power to appoint to public office, they nevertheless desire to point out that those contentions are for other reasons without merit.

(a) *If voting the government-owned stock were an office, the President of the Senate and the Speaker of the House of Representatives would be eligible to hold it.*

Section 18 of the Autonomy Act provides:

> "No senator or representative shall during the time for which he may have been elected, be eligible to any office the election to which is vested in the legislature, nor shall be appointed to any office of trust or profit which shall have been created or the emoluments of which have been increased during such term."

It is argued that this section of the Autonomy Act is pertinent to the present case.

It is in the first place obvious that section 18 does not prohibit members of the Philippine Legislature from holding any other office whatsoever during their term of service in the legislature. There are two classes of offices only that they are prohibited from holding.

The first—"any office the election to which is vested in the legislature"—obviously has nothing to do with the present case. The statute under attack does not provide for the election by the Legislature of the members of the stock-voting committee. The statute designates the Governor-General, the President of the Senate and the Speaker of the House of Representatives once and for all as the members thereof. Section 18 of the Autonomy Act obviously was aimed at the prevention of petty politics amongst the legislators, such as their eligibility to offices within the gift of their colleagues might promote. This evil the statute in question clearly does not involve.

The second prohibition of section 18 of the Autonomy Act is

> "No senator or representative shall during the time for which he may have been elected, * * * be appointed to any office of trust or profit which shall have been created, or the emoluments of which shall have been increased, during such term."

This provision is not very happily worded, but what it means seems reasonably plain.

In the first place it should be noted that a legislator may be appointed to an office of trust or profit which has *not* been created "during such term"—that is, "during the time for which he may have been elected". (Emolument is not attached to the stock-voting power and so need not be discussed.) It is plain, therefore, that the prohibition is not against a legislator's holding a second office of trust or profit during his service as senator or representative. His disability, moreover, is not perpetual even as to those offices created as described in the act.

So far, as the petitioners understand, they and the respondent are in agreement as to the meaning of section 18; but respondent further contends that, as to offices created during a legislator's term of office, his disability continues as long as he shall be a member of the legislature. It therefore ar-

gues that the Honorable Manuel L. Quezon was, and is, ineligible to the stock-voting committee as President of the Senate, since at the time when Act No. 2705 was passed, Mr. Quezon then was, as he ever since has been, a member of the Senate and the President thereof.

With this contention petitioners cannot agree. It seems plain that section 18 can bear no such meaning. It is clear that, as used in the section the phrases, "during the time for which he may have been elected" and "during such term", are synonymous. The use of the word, "term", with its very definite meaning, in the last of these phrases is itself strong evidence that the meaning for which the respondent contends is not that which Congress intended; but the use of the perfect tense in the other phrase, it seems to the petitioners, definitely settles the question. The period of disability is obviously the "time" for which the legislator has already "been elected" at the time the supposed office is created. To express any other meaning the words employed would be most inept. It seems plain, therefore, that as to offices created during a legislator's term of office his disability continues only until the end of that term, whether thereafter he be re-elected as a legislator or not.

Section 18 of the Philippine Autonomy Act is obviously patterned upon clause 2 of section 6 of Article I of the Constitution of the United States. That clause apparently has not been passed upon by this court, but it has been construed by the Attorneys General and the construction by them adopted has been in accord with the contentions of the petitioners. 17 Op. A. G. 365; 21 Op. A. G. 211. See also Story on the Constitution, sec. 667, and 1 Watson on the Constitution, 336, 339; and compare art. IV, sec. 30, of the Constitution of Indiana, and *Baker* v. *Kirk*, 32 Ind. 517; also art. 2, sec. 5, of the Constitution of Florida, and *In Re Members of the Legislature*, 49 Fla. 269. In the light of these authorities and of the wording of the Autonomy Act itself it is submitted that the construction contended for by the petitioners is obviously that which is correct.

Under that construction the Honorable Manuel L. Quezon and the Honorable Manuel Roxas, as President of the Senate and Speaker of the House of Representatives respectively at the times herein important, would be eligible to membership in the stock-voting committee even if Act 2705 could be deemed to have created offices within the meaning of section 18 of the Autonomy Act. As has already been indicated, the committee was created on March 10, 1917, by the passage of the act on that date. At that time Mr. Roxas was not a member of the Philippine Legislature. He was first elected to the House of Representatives in 1922. Mr. Quezon, on the other hand, was a member of the Senate at that time; but his then term of office expired the first Tuesday of October, 1922.

The petitioners, however, again wish to insist on the artificiality of the view that Act 2705 created public offices and to point out that unless this artificial view is taken section 18 of the Autonomy Act is wholly irrelevant to the present case.

(b) *The Governor-General of the Philippine Islands has no general power of appointing persons to public office and the alleged "offices" herein involved would not be within the powers of appointment specifically given to him under the Autonomy Act, even if they were properly regarded as "offices" within the meaning of that act.*

In the court below the respondents contended (1) that the power of appointing persons to public office, having been held by this court to be executive in character (*Myers* v. *United States*, 272 U. S. 52), was included in "the supreme executive power" vested in the Governor-General by section 21 of the Autonomy Act; and (2) that, even if this were not so, the power of appointment is, by the ensuing clauses of that section, specifically given to the Governor-General. In the light of these contentions it was argued, as has already been set forth, that Act 2705 is an invasion of the Governor-General's power (1) in appointing the members of the committee created by the act, and (2) in empowering the members

of the committee to appoint the directors, and, through them, the officers and employees of the National Coal Company.

The language of section 8 of the Autonomy Act by which "general legislative power except as otherwise provided for in this chapter" was granted to the Philippine Legislature has already been referred to. There is in the Autonomy Act no cataloguing of the powers granted to the Legislature.

In contrast is the language of section 21. The first sentence is:

> "The supreme executive power shall be vested in an executive officer, whose official title shall be the 'Governor-General of the Philippine Islands'."

Following this is a long catalogue of particular powers which the Governor-General shall enjoy.

This catalogue would be needless if the initial words of the section constituted a grant of "general executive power," for the catalogued powers are such as would be included, without more, in such a grant. (See the text of the section in appendix, page 62.) Neither can the catalogue be regarded as a mere precautionary specification of the content of a grant of general executive power. Such a precautionary specification would surely include a blanket clause, such as "and all other powers executive in character." But there is no such clause in section 21.

It seems clear that the nature of the grant in the two cases is not the same. The respondent would read the word "supreme" in the grant of power to the Governor-General as synonymous with "general" in the grant of power to the legislature. That they are not synonymous is obvious. This court, for example, is a court of supreme jurisdiction but its jurisdiction is limited, not general. It seems clear, therefore, that, although the Governor-General is made the supreme executive of the Philippine Government, his executive power is not general but consists only of the powers enumerated in the catalogue contained in section 21.

The respondent's reply is the proviso of section 22:

> "That all executive functions of the Government must be directly under the Governor-General or within one of the executive departments under the supervision and control of the Governor-General."

This proviso, however, should be read in context with the remainder of the section and the section, in turn, in context with the entire act.

Section 22 is reprinted *in extenso* at page 65 of the appendix to this brief. It provides that the existing executive departments shall continue in existence until otherwise provided by the Philippine legislature and that the heads of these departments shall continue in office until the heads provided for by the Philippine legislature pursuant to the provisions of the Autonomy Act shall be appointed and qualified. It provides that the Philippine legislature may increase the number of executive departments or abolish any of them and that it may make such changes in the names and the duties thereof as it shall see fit; but it commands that

> "The Philippine legislature * * * shall provide for the appointment and removal of the heads of the executive departments by the Governor-General."

And then follows the proviso that "all executive functions of the Government" shall be under the Governor-General directly or else within one of the executive departments under his supervision and control.

It seems perfectly clear that the proviso is nothing more than a definition by the method of negation of the power given to the legislature in section 22. There can be no question that the legislature is by the proviso forbidden to usurp or to fritter away the powers of the Governor-General; but what those powers are is not stated. It can hardly be supposed that Congress by this proviso intended to wipe out all the careful definition of the powers of the Governor-General contained in the catalogue in section 21. It is that section

which defines the powers of the Governor-General as the supreme executive of the Philippine Islands and to that section the court must look in determining the extent of the powers conferred upon the Governor-General.

In the catalogue contained in that section the Governor-General's powers of appointment of persons to public office are specifically covered. The language is:

> • • • "He shall, unless otherwise herein provided, appoint, by and with the consent of the Philippine Senate, such officers as might be appointed by the Governor-General, prior to August 29, 1916, or such as he is authorized by the provisions of this chapter to appoint, or whom he may hereafter be authorized by law to appoint; but appointments made while the senate is not in session shall be effective either until disapproval or until the next adjournment of the senate. • • • He shall commission all authorized officers that he may be authorized to appoint. He shall be responsible for the faithful execution of the laws of the Philippine Islands and of the United States operative within the Philippine Islands, • • •."

His powers of appointment, then, extend to three classes of officers. The first of these—"such officers as might be appointed by the Governor-General, prior to August 29, 1916"—is that upon which respondent chiefly relies (respondent's brief on petition, page 23). The argument is that by an executive order of the President of June 21, 1901, issued pursuant to the authority given by the "Spooner amendment" of March 2, 1901 (31 Statutes 910), it was provided that

> "The power to appoint civil officers heretofore vested in the Philippine Commission, or in the Military Governor, will be exercised by the Civil Governor with the advice and consent of the Commission."

That power to appoint "civil officers," it is argued, was ratified and continued in effect by section 1 of the Act of July 1, 1902, 39 Statutes 691 providing that

> "The action of the President of the United States • • • in creating the offices of Civil Governor and Vice

> Governor of the Philippine Islands and authorizing said Civil Governor and Vice Governor to exercise the powers to govern to the extent and in the manner and form set forth in the executive order dated June 21, 1901, * * * is hereby approved, ratified, and confirmed, and until otherwise provided by law the said Islands shall continue to be governed as thereby and herein provided, * * *".

It is further argued that the power of the Governor-General to appoint "civil officers" generally was continued in effect by virtue of the provision of section 21 of the Autonomy Act under discussion. The only change, it is contended, is that such appointments must now be made "by and with the advice and consent of the Philippine Senate."

The argument thus stated has a certain plausibility. But there is one difficulty and that one is fatal. Respondent's argument proves too much. It renders completely meaningless the grant of power contained in the language immediately following that under discussion—that is, the provision that the Governor-General shall appoint "such [officers] as he has authority by this Act to appoint, or whom he may hereafter be authorized by law to appoint."

It is elementary that in the construction of a statute the court should give effect to every word therein contained, if this be possible.

Reed vs. *Hoyt*, 13 Peters, 263;
U. S. vs. *Gooding*, 12 Wheat. 460;
Montclair Township vs. *Ramsdell*, 107 U. S. 147;
Peck vs. *Jenness*, 7 How. 612;
Heydenfeldt vs. *Dany Gold and Silver Mining Company*, 93 U. S. 634;
Rice vs. *Minnesota and Northwestern Railroad Company*, 1 Black, 358;
McKee vs. *United States*, 164 U. S. 287;
Pennington vs. *Coxe*, 2 Cranch, 33;
Kohlsaat vs. *Murphy*, 96 U. S. 153.

In the light of this canon of construction it is clear that the phrase "such officers as may now [*i. e.*, August 29, 1916] be appointed by the Governor-General" refers not to the whole class of "civil officers" as contended by the respondent but to the particular "civil officers" whom the Governor-General might at the time of the adoption of the Autonomy Act appoint—that is, the incumbents of civil offices then in existence. To that class the alleged office of voting the government stock in the National Coal Company obviously does not belong since it had no existence prior to the passage of Act No. 2705 on March 10, 1917.

The second class—"such as he is authorized by the provisions of this chapter [*i. e.*, the Autonomy Act] to appoint"—likewise is irrelevant to the present case. There is, of course, no specific mention in the Autonomy Act of the offices alleged herein to be concerned, and there is likewise no mention of any class of offices to which the members of the stock-voting committee or the directors, officers, and employees of the Coal Company can by any stretch of the imagination be deemed to belong.

To the third class—those "whom he may hereafter be authorized by law to appoint"—the offices here in question certainly cannot belong; for neither Act 2705 nor the amendatory act, No. 2822, confers upon the Governor-General any authority to appoint the members of the committee, and there is in no other statute any mention of these alleged offices either by name or by class.

Neither can the respondent argue, following the argument of the *Myers* decision, that the general responsibility for the faithful execution of the laws, which section 21 imposes upon the Governor-General, implies a power of appointing the members of the stock-voting committee. The members of the statutory committee are not charged by law with the duty of voting the government-owned stock in any particular way. For all that the statute provides to the contrary, the discretion of the members of the committee in voting the government-owned stock is precisely the same as that enjoyed by

any stock-holder with reference to the stock that he holds. There is no faithful execution of the laws with which these alleged officers are charged as subordinates of the Governor-General upon which to rest a line of argument similar to that followed by this court in the *Myers* decision. It may be added, moreover, that the power inferred in the *Myers* decision from the President's responsibility for the faithful execution of the laws was not a power of appointment but a power of removal from public office. It was in that case specifically recognized that, in its relation to this Presidential responsibility for the faithful execution of the laws, the power of removal from public office stands on a quite different footing from the power of appointment thereto.

It must be apparent therefore that the whole argument of the respondent based on a supposed invasion of the Governor-General's power of appointment falls to the ground. The Governor-General's powers are only those specifically given and those reasonably inferable as incidental to such specifically given powers.

Neither is there anything inconsistent with the terms of the Autonomy Act in a legislative exercise of a power of appointing persons to public office. Section 21, containing the grant of power to the Governor-General, plainly contemplates that the Senate shall participate even in those appointments which, by the terms of the section, are the Governor-General's special care; the section also plainly contemplates *some* appointments by governmental agencies other than the Governor-General; and section 18, discussed under (a), *supra*, plainly contemplates the selection of *some* officers by the legislative branch of the Philippine Government.

In view of these facts it seems clear that there would be nothing objectionable in the provisions of Act 2705 even if all the artificial assumptions of the respondent as to the nature of that act were conceded.

POINT VII.

The Philippine statutes here in question have received the implied sanction of Congress and should not be disturbed.

It will be recalled from the statement of facts herein that the stock-voting provisions of Act No. 2705 here under attack date back to March 10, 1917, when Act 2705 was passed by the Philippine Legislature. That act was then submitted to and signed by the then Governor-General as prescribed by section 19 of the Philippine Autonomy Act. In accordance with the further provisions of section 19, the act was thereafter also submitted to Congress, which reserved to itself under section 19 of the Autonomy Act the right of annulling, if it should see fit, any of the acts of the Philippine Legislature passed in pursuance of the Autonomy Act. The amendatory act, No. 2822, passed by the Philippine Legislature March 5, 1919, was likewise signed by the Governor-General and submitted to Congress. Neither act has up to date been annulled by Congress.

It will be recalled that Act No. 2822 re-enacted without change the stock-voting provisions of No. 2705 that are here under attack. Those provisions, then, have remained on the statute books undisturbed by Congress for eleven years. In addition, before the present dispute arose, the stock-voting committee had been functioning as the statute provided for a period of nine years. Both the Governor-General who approved the acts and his successor who finally launched the present attack upon the stock-voting provisions had during this nine years participated in the voting of the government-owned stock by the statutory committee.

In an early case, *Clinton* vs. *Englebrecht,* 13 Wall. 434, this court held that under such circumstances an inference

of Congressional approval is justified. It was said in that case (p. 446):

> "In the first place we observe that the law has received the implied sanction of Congress. It was adopted in 1859. It has been upon the statute-book for more than twelve years. It must have been transmitted to Congress soon after it was enacted, for it was the duty of the secretary of the Territory to transmit to that body copies of all laws, on or before the 1st of the next December in each year. The simple disapproval by Congress at any time, would have annulled it. It is no unreasonable inference, therefore, that it was approved by that body."

In *Gromer* vs. *Standard Dredging Company*, 224 U. S. 362, the following language from an opinion by Solicitor General Hoyt was quoted with approval (p. 371):

> "the relation of Congress to all territorial legislation is similar [certain organic acts of the States being cited], and thus it may be said that the exercise of local jurisdiction for ordinary municipal purposes over a reservation in a territory is valid until and unless disapproved by Congress." 26 Op. A. G. 91, 97.

And in *Tiaco* vs. *Forbes*, 228 U. S. 549, this court, though disposing of the case to the same effect on other grounds, went out of its way to say (p. 557):

> "By §86 of the act of July 1, 1902, all laws passed by the Philippine Government are to be reported to Congress, which reserves power to annul them. It is worthy of mention that the law under consideration was reported to Congress and has not been annulled."

In the light of these decisions, it would seem clear that where, as here, an act of a territorial legislature, though reported to Congress, has remained undisturbed by it for a period of years, such territorial statute is to be regarded as impliedly approved by Congress.

This has certainly been the understanding of the territorial courts. In *Chanco* v. *Imperial*, 34 Phil. Rep. 329, the Supreme Court of the Philippine Islands in adverting to this court's decision in the *Tiaco* case, *supra*, said (p. 331):

> "The Supreme Court of the United States has held that the Philippine Legislature has the same powers in the Philippine Islands, within the sphere in which it may operate, as Congress itself (*Tiaco* v. *Forbes*, 228 U. S. 549); and it has strongly intimated that when an act of the Philippine Legislature is reported to Congress and has not been annulled by that body it is a lawful and valid act."

See also *United States* vs. *Bull*, 15 Phil. Rep. 31, and *Baca* vs. *Perez*, 8 N. M. 187, 42 Pac. 162, 164, in which latter case it was said:

> "It is fundamental that congress, not rejecting territorial legislation, approves it,—the corollary of the statute which requires the submission of the acts of the legislature to congress, and declares that 'if disapproved they shall be null and of no effect.' * * * If wrong, it has been permitted to pass current as law by competent and controlling authority, and must be accepted as affirmation tantamount to congressional decree. Says the supreme court of the United States: 'The simple disapproval by congress, at any time, would have annulled it [Utah jury law]. It is no unreasonable inference, therefore, that it was approved by that body.' *Clinton* v. *Englebrecht*, 13 Wall. 445. Acquiescence by a party who might have repudiated is ratification."

The law on this point seems well settled.

Nothing cited by the respondent casts any doubt on this proposition. There was, first, the statement of Judge Anderson of the First Circuit in *Gallardo* vs. *Porto Rico Railway Light and Power Company*, 18 Fed. 2d 918, 923, to the effect that failure by Congress to annul a territorial act is entitled to some but not necessarily controlling weight. This statement, however, should be read with the statement of

the same judge in *Fajardo Sugar Company* vs. *Holcomb*, 16 Fed. 2d, 92, 96:

> "There is also a provision in section 34 that:
>
> 'All laws enacted by the legislature of Porto Rico shall be reported to the Congress of the United States, * * * which hereby reserves the power and authority to annul the same.'
>
> "If not thus annulled within reasonable time, there is a presumption that they are approved. *Tiaco* v. *Forbes*, 228 U. S. 549, 558, 33 S. Ct. 585, 57 L. Ed. 960; *Porto Rico* v. *American etc., R. R.*, 254 F. 369, 165 C. C. A. 589; *Camunas* v. *P. R. Ry* (C. C. A.) 272 F. 924, 931, and cases cited.
>
> "The result is that all Porto Rican legislation now on the statute books is—in a very real sense, though indirectly—the output of our federal government. Under such conditions, the court should not lightly assume that the tax acts of Porto Rico, now contended to be in conflict with section 20 of the Organic Act, are inconsistent and therefore invalid. Doubtless the relation of the Organic Act to the Porto Rican government is, in certain aspects, like the relation of a state Constitution to a state Legislature. *Camunas* v. *P. R. Ry., etc., Co.* (C. C. A. 272 F. 924, 928.
>
> "But the analogy is not complete; for, after all, the Organic Act is nothing but federal legislation, and Porto Rican legislation, approved expressly or impliedly by Congress, has exactly the same import."

The *Gallardo* case could of course not control as against the cases from this court already cited, but it seems unlikely that any qualification of those opinions was intended.

The only citation from the opinions of this court that was asserted to qualify the holdings in the *Englebrecht* and other cases cited, *supra*, was the statement of this court in *Myers* vs. *United States*, 272 U. S. 52, 170-171, in reference to the interpretive value of Congressional enactments implying an assertion of doubtful legislative power under the Constitution of the United States (respondent's brief on

petition, p. 33); but this citation involves a rather amazing confusion as to the problem presented in the present case. In the *Myers* case it was the meaning of the Constitution of the United States that was at issue—a law, that is, binding on the legislature, the interpretive value of whose acts was in the *Myers* case being assessed. In the present case the inaction of Congress is as to a matter completely within its power. *Binns* vs. *United States*, 194 U. S. 486.

That *mere* failure to annul is not necessarily conclusive may possibly be true; but where, as here, the failure is a failure continuing over a period of eleven years—almost the exact time mentioned in the *Englebrecht* decision, *supra*—and where, in addition, that failure is in the face of the public attention that Philippine affairs recently have had, the meaning of Congressional inaction can not be regarded as dubious; but even if it could be so regarded, the Wood-Forbes Report recommending (at p. 46 thereof) "that Congress declare null and void legislation which has been enacted diminishing, limiting, or dividing authority granted the Governor-General under Act No. 240 of the Sixty-fourth Congress, known as the Jones Bill", and drawing attention specifically to the National Coal Company (at p. 42) should set that doubt at rest. (See Document No. 325 H. R., Sixty-seventh Congress, Second Session). There can be no question that Congress is satisfied that Act 2705, as amended by Act 2822; of the Philippine Legislature shall remain the law.

The respondent has insisted (respondent's brief on petition, p. 32) that the Congressional reservation of power in section 19 of the Autonomy Act is a reservation of power legislative in character. With this, of course, the petitioners are in thorough agreement and the legislative power of Congress in the premises is plenary. As said by this court in *Binns* vs. *United States*, 194 U. S. 486, at p. 491:

> "It must be remembered that Congress, in the government of the Territories as well as of the District of Columbia, has plenary power, save as controlled by the

provisions of the Constitution, that the form of government it shall establish is not prescribed, and may not necessarily be the same in all the Territories. We are accustomed to that generally adopted for the Territories, of a *quasi* state government, with executive, legislative and judicial officers, and a legislature endowed with the power of local taxation and local expenditures, but Congress is not limited to this form. In the District of Columbia it has adopted a different mode of government, and in Alaska still another. It may legislate directly in respect to the local affairs of a Territory or transfer the power of such legislation to a legislature elected by the citizens of the Territory."

Upon express or implied approval by Congress an act of the Philippine Legislature becomes legally equivalent to an enactment by Congress directly. The function of the judiciary in such a case is not that of inquiring into the validity of a territorial act asserted to conflict with an organic act but that of interpreting two statutes *in pari materia* in which the specific provisions of one conflict with the general provisions of the other. In the interpretation of such statutes, it is a settled rule that the specific statute is to be treated as establishing an exception to the general rule established by the statute of more general import.

Townsend vs. *Little*, 109 U. S. 504;
United States vs. *Nix*, 189 U. S. 205;
Kepner vs. *United States*, 195 U. S. 125.

In view of the inaction of Congress during the last eleven years it is submitted that such is now the status of Act 2705 of the Philippine Legislature.

CONCLUSION.

In conclusion, the petitioners desire only to point out what seems to them the controlling consideration if, as seems improbable, this court should think that any of the foregoing contentions are of doubtful soundness. That consideration is that by the Philippine Autonomy Act Congress launched

an experiment in the Philippine Islands in local self-government. The debates in Congress at the time, which have been quoted above, show beyond all doubt an intention, shared by Republicans and Democrats alike, to give to the Philippine Legislature, the only entity in the Philippine Government directly representative of the Philippine people, a large freedom in dealing with local affairs. Skill and wisdom in local self-government can come only from experience. Only twelve years have passed since passage of the Autonomy Act. Congress has declined, so far, to disturb the experiment. In a similar spirit, it is respectfully submitted, this court should resolve all doubts in favor of the validity of the acts of the Insular Legislature. Those acts may be wise or unwise; but with that question this court has nothing to do. Congress, which is charged with the consideration of that question, has declined to interfere. In this situation, and in the light of the strictly legal aspects of the case hereinbefore considered, the judgment of the court below should be reversed and the title of the petitioners as directors of the National Coal Company confirmed.

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APPENDIX.

Act No. 2705 of the Philippine Legislature—An Act to create the National Coal Company.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE PHILIPPINES IN LEGISLATURE ASSEMBLED AND BY THE AUTHORITY OF THE SAME:

SECTION 1. A company is hereby organized, which shall be known as the National Coal Company, the principal office of which shall be in the city of Manila, and which shall exist for a period of fifty years, from and after the date of the approval of this Act.

SEC. 2. The said company shall be subject to the provisions of the Corporation Law in so far as they are not inconsistent with the provisions of this Act, and shall have the general powers mentioned in said Act and such other powers as may be necessary to enable it to prosecute the business of developing coal deposits in the Philippine Islands, and of mining, extracting, transporting, and selling the coal contained in said deposits.

SEC. 3. The capital of said company shall be three million pesos divided into thirty thousand shares of stock having a par value of one hundred pesos each, and no stock shall be issued at less than par nor except for cash.

SEC. 4. The Governor-General, on behalf of the Government of the Philippine Islands shall subscribe for fifty-one per centum of said capital stock, and the remainder shall be offered to the public. Ten per centum of the value of all stock subscribed shall be paid at the time of the subscription, and the balance thereof shall be paid at such time as shall be prescribed by the Board of Directors. The voting power of all such stock owned by the Government of the Philippine Islands shall be vested exclusively in a committee consisting of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives.

SEC. 5. The board of directors of the company shall consist of five members.

SEC. 6. There is hereby appropriated, out of any funds in the Insular Treasury not otherwise appropriated, the sum of one million five hundred and thirty thousand pesos, for investment in the stock of the National Coal Company to be acquired by the Insular Government: *Provided, however,* That the Insular Auditor shall not set up said sum on his books in full, but only such part or parts thereof as it may be necessary to invest for the development of the corporation created by this Act.

SEC. 7. All Acts or parts of Acts inconsistent with this Act are hereby repealed.

SEC. 8. This Act shall take effect upon its approval.

Approved, March 10, 1917.

Act No. 2822 of the Philippine Legislature—An Act to amend certain sections of Act Numbered Twenty-seven hundred and five, entitled "An Act to create the National Coal Company."

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE PHILIPPINES IN LEGISLATURE ASSEMBLED AND BY THE AUTHORITY OF THE SAME:

SECTION 1. Section two of Act Numbered Twenty-seven hundred and five, entitled "An Act to create the National Coal Company," is hereby amended to read as follows:

"SEC. 2. The said company shall be subject to the provisions of the Corporation Law in so far as they are not inconsistent with the provisions of this Act, and shall have the general powers mentioned in said Act and such other powers as may be necessary to enable it to prosecute the business of developing coal deposits in the Philippine Islands, and of mining, extracting, transporting, and selling the coal contained in said deposits. Said company shall have priority of rights as regards the cutting and utilization of forest products for its own use in any public forest, in accordance with the Forest Law and the regulations and instructions now in force or which may hereafter be issued with regard to the cutting, gathering, and transportation or forest products."

SEC. 2. Section four of Act Numbered Twenty-seven hundred and five, entitled "An Act to create the National Coal Company is hereby amended to read as follows:

"SEC. 4. The Governor-General, on behalf of the Government of the Philippine Islands shall subscribe for at least fifty-one per centum of said capital stock, and the remainder may be offered to the public. Ten per centum of the value of all stock subscribed shall be paid at the time of the subscription, and the balance thereof shall be paid at such time as shall be prescribed by the Board of Directors. The voting power of all such stock owned by the Government of the Philippine Islands shall be vested exclusively in a committee consisting of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives."

SEC. 3. Section six of said Act is hereby amended to read as follows:

"SEC. 6. There is hereby appropriated, out of any funds in the Insular Treasury not otherwise appropriated, such sum as may be necessary to pay for the stock of the National Coal Company to be acquired by the Insular Government: *Provided, however,* That the Insular Auditor shall not set up said sum on his books in full, but only such part or parts thereof as it may be necessary to invest for the development of the corporation created by this Act."

SEC. 4. This Act shall take effect on its approval.

Approved, March 5, 1919.

GOVERNOR GENERAL'S EXECUTIVE ORDER

Executive Order No. 37, Philippine Official Gazette, Vol. XXIV, No. 135, November 11, 1926, p. 2419.

"Office of the Governor General of
the Philippine Islands.

Manila, November 9, 1926.

"Whereas it is held in an opinion of the Judge Advocate General of the United States Army, confirmed by an opinion of the Attorney General of the United States, received at the office of the Executive, November seventh, nineteen hundred and twenty-six, that the provisions of the statutes passed by the Philippine Legislature creating a 'Board of Control' or 'Committee' and enumerating the duties and powers thereof, with respect to certain corporations in which the Insular Government is the owner of stock, are nullities; that the remaining portions of said statutes are valid; that the duties imposed by said statutes upon said Board or Committee are executive in their nature, and subject to the provisions of the Organic Act relating to the executive functions; that said executive duties and powers may be performed as in other cases not specifically provided for by law.

"Now, therefore, acting under authority of said opinions the duties and powers heretofore exercised by said 'Board of Control' or 'Committee' shall, from and after this date be exercised solely by the Governor-General pursuant to the executive power vested in him by the Organic Act."

LEONARD WOOD,
Governor-General."

Act of Congress of July 1, 1902, 32 Stat. 691.

CHAP. 1369.—An Act Temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes.

* * * * * * * *

SEC. 12. That all the property and rights which may have been acquired in the Philippine Islands by the United States under the treaty of peace with Spain, signed December tenth, eighteen hundred and ninety-eight, except such land or other property as shall be designated by the President of the United States for military and other reservations of the Government of the United States, are hereby placed under the control of the government of said islands to be administered for the benefit of the inhabitants thereof, except as provided in this Act.

Act of Congress of August 29, 1916 (Autonomy Act), 39 Stat. 545.

CHAP. 416.—An Act to declare the purpose of the people of the United States as to the future political status of the people of the Philippine Islands, and to provide a more autonomous government for those islands.

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SEC. 8. That general legislative power, except as otherwise herein provided, is hereby granted to the Philippine Legislature, authorized by this Act.

SEC. 9. That all the property and rights which may have been acquired in the Philippine Islands by the United States under the treaty of peace with Spain, signed December tenth, eighteen hundred and ninety-eight, except such land or other property as has been or shall be designated by the President of the United States for military and other reservations of the Government of the United States, and all lands which may have been subsequently acquired by the government of the Philippine Islands by purchase under the provisions of sections sixty-three and sixty-four of the Act of Congress approved July first, nineteen hundred and two, except such as may have heretofore been sold and disposed of in accordance with the provisions of said Act of Congress, are hereby placed under the control of the government of said islands to be administered or disposed of for the benefit of the inhabitants thereof, and the Philippine Legislature shall have power to legislate with respect to all such matters as it may deem advisable: * * *

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SEC. 12. That general legislative powers in the Philippines, except as herein otherwise provided, shall be vested in a legislature which shall consist of two houses, one the senate and the other the house of representatives, and the two houses shall be designated "The Philippine Legislature": *Provided*, That until the Philippine Legislature as herein provided shall have been organized the existing Philippine Legislature shall have all legislative authority herein granted to the government of the Philippine Islands, except such as may now be within the exclusive jurisdiction of the Philippine Commis-

sion, which is so continued until the organization of the legislature herein provided for the Philippines. When the Philippine Legislature shall have been organized, the exclusive legislative jurisdiction and authority exercised by the Philippine Commission shall thereafter be exercised by the Philippine Legislature.

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SEC. 19. * * * The Governor General shall have the power to veto any particular item or items of an appropriation bill, but the veto shall not affect the item or items to which he does not object. The item or items objected to shall not take effect except in the manner heretofore provided in this section as to bills and joint resolutions returned to the legislature without his approval.

All laws enacted by the Philippine Legislature shall be reported to the Congress of the United States, which hereby reserves the power and authority to annul the same. If at the termination of any fiscal year the appropriations necessary for the support of the government for the ensuing fiscal year shall not have been made, the several sums appropriated in the last appropriation bills for the objects and purposes therein specified, so far as the same may be done, shall be deemed to be reappropriated for the several objects and purposes specified in said last appropriation bill; and until the legislature shall act in such behalf the treasurer shall, when so directed by the Governor General, make the payments necessary for the purposes aforesaid.

* * * * * * * * * *

SEC. 21. That the supreme executive power shall be vested in an executive officer, whose official title shall be "The Governor General of the Philippine Islands." He shall be appointed by the President, by and with the advice and consent of the Senate of the United States, and hold his office at the pleasure of the President and until his successor is chosen and qualified. The Governor General shall reside in the Philippine Islands during his official incumbency, and maintain his office at the seat of government. He shall, unless otherwise herein provided, appoint, by and with the consent of the Philippine Senate, such officers as may now be appointed by the Governor General, or such as he is authorized by this Act to appoint, or whom he may hereafter be author-

ized by law to appoint; but appointments made while the senate is not in session shall be effective either until disapproval or until the next adjournment of the senate. He shall have general supervision and control of all of the departments and bureaus of the government in the Philippine Islands as far as is not inconsistent with the provisions of this Act, and shall be commander in chief of all locally created armed forces and militia. He is hereby vested with the exclusive power to grant pardons and reprieves and remit fines and forfeitures, and may veto any legislation enacted as herein provided. He shall submit within ten days of the opening of each regular session of the Philippine Legislature a budget of receipts and expenditures, which shall be the basis of the annual appropriation bill. He shall commission all officers that he may be authorized to appoint. He shall be responsible for the faithful execution of the laws of the Philippine Islands and of the United States operative within the Philippine Islands, and whenever it becomes necessary he may call upon the commanders of the military and naval forces of the United States in the islands, or summon the posse comitatus, or call out the militia or other locally created armed forces, to prevent or suppress lawless violence, invasion, insurrection, or rebellion; and he may, in case of rebellion or invasion, or imminent danger thereof, when the public safety requires it, suspend the privileges of the writ of habeas corpus, or place the islands, or any part thereof, under martial law: *Provided*, That whenever the Governor General shall exercise this authority, he shall at once notify the President of the United States thereof, together with the attending facts and circumstances, and the President shall have power to modify or vacate the action of the Governor General. He shall annually and at such other times as he may be required make such official report of the transactions of the government of the Philippine Islands to an executive department of the United States to be designated by the President, and his said annual report shall be transmitted to the Congress of the United States; and he shall perform such additional duties and functions as may in pursuance of law be delegated or assigned to him by the President.

SEC. 22. That, except as provided otherwise in this Act, the executive departments of the Philippine government shall continue as now authorized by law until otherwise provided

by the Philippine Legislature. When the Philippine Legislature herein provided shall convene and organize, the Philippine Commission, as such, shall cease and determine, and the members thereof shall vacate their offices as members of said commission: *Provided*, That the heads of executive departments shall continue to exercise their executive functions until the heads of departments provided by the Philippine Legislature pursuant to the provisions of this Act are appointed and qualified. The Philippine Legislature may thereafter by appropriate legislation increase the number or abolish any of the executive departments, or make such changes in the names and duties thereof as it may see fit, and shall provide for the appointment and removal of the heads of the executive departments by the Governor General: *Provided*, That all executive functions of the government must be directly under the Governor General or within one of the executive departments under the supervision and control of the Governor General. There is hereby established a bureau, to be known as the Bureau of Non-Christian Tribes, which said bureau shall be embraced in one of the executive departments to be designated by the Governor General, and shall have general supervision over the public affairs of the inhabitants of the territory represented in the legislature by appointive senators and representatives.

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CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1927.

No. 573.

GREGORIO AGONCILLO, BALDOMERO ROXAS and CATALINO LAVADIA,

Petitioners,

v.

THE GOVERNMENT OF THE PHILIPPINE ISLANDS,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

JOHN W. DAVIS,
JOSE ABAD SANTOS,
JAMES ROSS,
QUINTIN PAREDES,
CLARO M. RECTO,
Counsel for Petitioners.

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